

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 BRICK S HOUSTON, JR,

4 Plaintiff,

5 v.

6 JAMES DZURENDA, et. al,

7 Defendants.

Case No. 2:18-cv-02298-APG-BNW

ORDER

8 This action is a *pro se* civil rights complaint filed under 42 U.S.C. § 1983 by a former
9 state prisoner. On September 20, 2019, Magistrate Judge Weksler issued an order denying the
10 application to proceed *in forma pauperis* as moot because plaintiff Brick Houston was no longer
11 incarcerated. ECF No. 15 at 1. Judge Weksler ordered Houston to file a fully complete
12 application to proceed *in forma pauperis* for non-prisoners or pay the full filing fee of \$400.00
13 within 30 days from the date of that order. *Id.* at 2. The 30-day period has expired, and Houston
14 has not filed an application, paid the full filing fee, or otherwise responded to the order.

15 District courts have the inherent power to control their dockets and “[i]n the exercise of
16 that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.
17 *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may
18 dismiss an action with prejudice based on a party’s failure to prosecute an action, failure to obey
19 a court order, or failure to comply with local rules. *See Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th
20 Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258,
21 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of
22 complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to
23 comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v.*

1 *U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court
2 order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of
3 prosecution and failure to comply with local rules).

4 In determining whether to dismiss an action for lack of prosecution, failure to obey a
5 court order, or failure to comply with local rules, the court must consider several factors: (1) the
6 public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket;
7 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on
8 their merits; and (5) the availability of less drastic alternatives. *Thompson*, 782 F.2d at 831;
9 *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-61;
10 *Ghazali*, 46 F.3d at 53.

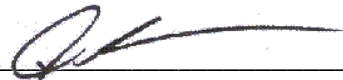
11 Here, the first two factors (the public's interest in expeditiously resolving this litigation
12 and the court's interest in managing the docket) weigh in favor of dismissal. The third factor
13 (risk of prejudice to Defendants) also weighs in favor of dismissal because a presumption of
14 injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the court
15 or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The
16 fourth factor (public policy favoring disposition of cases on their merits) is greatly outweighed
17 by the factors in favor of dismissal discussed herein. Finally, a court's warning to a party that his
18 failure to obey the court's order will result in dismissal satisfies the "consideration of
19 alternatives" requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*,
20 779 F.2d at 1424. Judge Weksler's order requiring Houston to file an application to proceed *in*
21 *forma pauperis* for non-prisoners or pay the full filing fee within 30 days expressly stated: "It is
22 further ordered that if Plaintiff does not timely comply with this order, dismissal of this action
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1 may result.” ECF No. 15 at 2. Thus, Houston had adequate warning that dismissal would result
2 from his noncompliance with the order.

3 I therefore order that this action is dismissed without prejudice based on the plaintiff’s
4 failure to file an application to proceed *in forma pauperis* for non-prisoners or pay the full filing
5 fee in compliance with Magistrate Judge Weksler’s September 20, 2019 order.

6 I further order the Clerk of Court to enter judgment accordingly.

7 Dated: November 19, 2019.

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10 ANDREW P. GORDON
11 UNITED STATES DISTRICT JUDGE
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